

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

MAX REED II, )  
                    )  
Plaintiff,       )         3:11-cv-00066-HDM-WGC  
                    )  
vs.                )  
                    )  
DEPUTY (AARON) TRACY, et al., )  
                    )  
Defendants.       )  
                    /

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PROCEEDINGS: JURY TRIAL - DAY ONE

PRESENT:

THE HONORABLE HOWARD D. McKIBBEN, SENIOR U.S. DISTRICT JUDGE

Deputy Clerk: Paris Rich      Reporter: Kathryn French

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Pro Se Plaintiff: Max Reed II

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Counsel for Defendants: Mary Kardaras and Jennifer Gustafson

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At 8:15 a.m., the Court convenes.

The Pro Se Plaintiff (In Custody) is present.

Mary Kardaras and Jennifer Gustafson, Office of the Washoe County District Attorney, are present with Defendant Deputy Aaron Tracy and Defendant Sergeant John Hamilton.

The Plaintiff waives review this date of the audio CDs discussed at the February 18, 2014 Telephonic Pretrial Conference.

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The Plaintiff presents for filing an original Motion for Order to Produce Prisoner for Trial, Anthony Thomas-91694. The Plaintiff presents statements. The Court recites findings. **IT IS ORDERED, the Motion for Order to Produce Prisoner for Trial is DENIED.**

The Court recites further parameters regarding the parties' opening statements. The Court also advises the parties as to the anticipated trial presentation. The Court and the parties confer.

The Court and the parties discuss the Plaintiff's Exhibits.

**The Defendants' Exhibit 4 is received into evidence.**

At 8:42 a.m., the Court stands at recess.

At the recess, the Courtroom Clerk assists the Plaintiff in the marking and copying of his Exhibits and in the preparation of the Plaintiff's Exhibit List.

At 9:06 a.m., the Court reconvenes with all parties present.

At 9:06 a.m., 23 prospective jurors enter the courtroom.

The Court presents opening remarks and introduces counsel. The Court further summarizes this action and the anticipated trial schedule. The voir dire oath is administered and 13 prospective jurors are seated; voir dire proceeds.

At 9:37 a.m., the jury is passed for cause. Counsel exercise peremptory challenges.

At 9:43 a.m., all the prospective jurors are briefly recessed from the Courtroom.

Outside the presence of the prospective jurors, the Court and the parties confer regarding a *Batson* challenge.

At 9:56 a.m., all prospective jurors reenter the courtroom. The parties stipulate to the 7 seated jurors. The Court thanks and excuses the remaining jurors for a period of three (3) years.

At 9:58 a.m., 7 jurors are empaneled and sworn.

The Plaintiff presents opening statements.

Ms. Gustafson presents opening statements on behalf of the Defendants.

At 10:13 a.m., the jury is admonished and excused.

Outside the presence of the jury, the Plaintiff addresses a concern regarding the Defendants' opening statements. The Court presents statements.

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At 10:18 a.m., the Court stands at recess.

At 10:35 a.m., the Court reconvenes with the jury present.

AARON TRACY, Deputy, Washoe County Sheriff's Department, called on behalf of the Plaintiff, is sworn, examined on direct by the Plaintiff, cross-examined by Ms. Gustafson, examined on redirect by the Plaintiff, and released subject to recall.

**The Plaintiff's Exhibits 22 and 14 are received into evidence.**

At 11:24 a.m., the jury is admonished excused.

Outside the presence of the jury, the Court, the Plaintiff and the Defendants' counsel confer regarding the non-subpoena by the Plaintiff of Lt. Peter Petzing. Ms. Kandaras further confirms that Lt. Peter Petzing was listed as the Defendants' witness and was related to the previously dismissed Count One only.

The Court advises the Plaintiff regarding the options of trial progression.

At 11:28 a.m., the Court stands at recess.

At 11:31 a.m., the Court convenes outside the presence of the jury. The Court advises the parties of limiting instruction it intends to give to the jury on the issue involving contraband.

At 11:33 a.m., the jury enters the courtroom.

The Court recites a limiting instruction to the jury regarding contraband.

JOHN HAMILTON, Sergeant, Washoe County Sheriff's office, called on behalf of the Plaintiff, is sworn, is examined on direct by the Plaintiff, and released subject to recall.

**The Plaintiff's Exhibits 13, 23 and 11 are received into evidence.**

At 12:01 p.m., the jury is admonished and excused until 1:15 p.m. this date.

Outside the presence of the jury, the Plaintiff indicates he will not be testifying in the Plaintiff's case. The Court discusses the remaining trial schedule.

The Court advises the parties to return to the courtroom at 1:00 p.m. this date.

At 12:06 p.m., the Court stands at recess.

At 1:01 p.m., the Court reconvenes with all parties present.

The Plaintiff confirms he will not be testifying on behalf of the Plaintiff's case.

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The parties have no objection to the Proposed Jury Instructions.

The Court recites further statements regarding the trial progression.

At 1:09 p.m., the jury enters the courtroom.

JOHN HAMILTON, Sergeant, Washoe County Sheriff's office, remaining under oath, resumes the witness stand, is cross-examined by Ms. Gustafson, examined on redirect by the Plaintiff, recross-examined by Ms. Gustafson, further examined on redirect by the Plaintiff, and released subject to recall.

The Plaintiff rests.

At 1:22 p.m., the jury is admonished and excused.

Outside the presence of the jury, Ms. Gustafson recites FRCP Rule 50 Motion. The Plaintiff presents responsive objection. Ms. Gustafson presents final argument. **IT IS ORDERED, the Court's RESERVES ruling on the Defendants' Rule 50 Motion.**

The Plaintiff states he has reconsidered his position and desires to testify on behalf of the Plaintiff's case. The Court grants the Plaintiff's oral motion to reopen his case.

At 1:29 p.m., the jury enters the courtroom with all parties present.

MAX REED II, Plaintiff, called on behalf of the Plaintiff, is sworn, testifies using narrative form, is cross-examined by Ms. Kandaras, (the Court recites limited instruction to the jury), and is released subject to recall.

**The Defendants' Exhibits 1, 5 , 8, and 9 are received into evidence.**

**The Plaintiff's Exhibit 18 is received into evidence.**

At 2:34 p.m., the jury is admonished and excused.

At 2:51 p.m., the Court reconvenes outside the presence of the jury with all parties present.

The jury enters the courtroom.

MAX REED II, Plaintiff, remaining under oath, resumes the witness stand, testifies on redirect using narrative form, and is excused.

At 3:09 p.m., the jury is admonished and excused.

Outside the presence of the jury, the Plaintiff rests.

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Ms. Gustafson renews the Defendants' FRCP Rule 50 Motion. The Court recites findings.  
**IT IS ORDERED, the Defendants' FRCP Rule 50 Motion is DENIED.**

At 3:12 p.m., the jury enters the courtroom.

AARON TRACY, Deputy, Washoe County Sheriff's Department, called on behalf of the Defendants, remaining under oath, resumes the witness stand, is examined on direct by Ms. Gustafson, cross-examined by the Plaintiff, and excused,

**The Defendants' Exhibits 6 and 7 are received into evidence.**

JOHN HAMILTON, Sergeant, Washoe County Sheriff's office, called on behalf of the Defendants, remaining under oath, resumes the witness stand, is examined on direct by Ms. Gustafson, cross-examined by the Plaintiff, and released subject to recall.

At 4:22 p.m. the Courtroom experiences a power outage. The jury is admonished and excused. The Court stands at recess.

At 4:30 p.m., the jury enters the courtroom with all parties present.

JOHN HAMILTON, Sergeant, Washoe County Sheriff's office, remaining under oath, resumes the witness stand, is further cross-examined by the Plaintiff, and excused.

The Defense rests.

The Court addresses the remaining trial schedule.

The jury is admonished and excused until 8:30 a.m. on Thursday, February 20, 2014.

At 4:32 p.m., outside the presence of the jury, the Court presents further statements regarding the remaining trial schedule.

The Plaintiff addresses his earlier Motion for Order to Produce Prisoner for Trial, Anthony Thomas-91694. The Court recites findings and confirms it has already ruled on the matter.

**IT IS ORDERED, Jury Trial (Day Two) is continued to Thursday, February 20, 2014 at 8:30 a.m. in Reno Courtroom 4 before Judge Howard D. McKibben.**

The Plaintiff is remanded to custody.

At 4:33 p.m., the Court adjourns.

LANCE S. WILSON, CLERK

By: /s/ Paris Rich  
Deputy Clerk